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Administrative Appeal Decision - Smith, Christopher (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Smith, Christopher

Facility: Livingston CF

NYSID [REDACTED]

Appeal Control No.: 12-166-18 R

DIN: 11-B-0270

Appearances: Christopher Smith 11B0270
Livingston Correctional Facility
P.O. Box 91
Sonyea, New York 14556

Decision appealed: November 21, 2018 revocation of release and imposition of a time assessment of 18 months.

Final Revocation November 21, 2018

Hearing Date:




Papers considered: Appellant's Letter-brief received February 20, 2019

Appeals Unit Statement of the Appeals Unit's Findings and Recommendation

Review:

Records relied upon: Notice of Violation, Violation of Release Report, Final Hearing Transcript, Parole Revocation Decision Notice

Final Determination: The undersigned determine that the decision appealed is hereby:

	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	

If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 6/6/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Smith, Christopher **DIN:** 11-B-0270
Facility: Livingston CF **AC No.:** 12-166-18 R

Findings: (Page 1 of 1)

Appellant challenges the November 21, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 18-month time assessment. Appellant is on parole for possession of a loaded revolver and a mini-revolver. As for this parole revocation matter, appellant pled guilty to three charges. One charge was for using marijuana, one charge was for possession of an illegal knife, and one charge was for leading police on a high speed car chase right past a crowded school. Appellant was also accused of possessing cocaine, a curfew violation, and of choking a woman. Per the plea bargain agreement, all the remaining charges were dismissed. Appellant raises the following issues: 1) as for the sustained drug charge, appellant should have been sent to a drug rehabilitation program, and not prison. 2) he is innocent of the knife charge. 3) no criminal charges were filed for either the knife, or the police car chase incident.

The record reflects appellant, who was represented by counsel at the final revocation hearing, pleaded guilty to three charges with the understanding that the Administrative Law Judge (“ALJ”) would impose an 18-month time assessment pursuant to a joint recommendation by the parties. The guilty plea was entered into knowingly, intelligently and voluntarily. Consequently, his guilty plea forecloses this challenge. See Matter of Steele v. New York State Div. of Parole, 123 A.D.3d 1170, 998 N.Y.S.2d 244 (3d Dept. 2014); Matter of Gonzalez v. Artus, 107 A.D.3d 1568, 1569, 966 N.Y.S.2d 710, 711 (4th Dept. 2013).

The Board may impose a time assessment instead of providing rehabilitative treatment. Robinson v Travis, 295 A.D.2d 719, 743 N.Y.S.2d 330 (3d Dept 2002).

The fact that the inmate was not criminally convicted does not preclude a Rule #8 parole revocation for the same conduct. Young v Dennison, 29 A.D.3d 1194, 1195 (3d Dept. 2006); Davidson v New York State Division of Parole, 34 A.D.3d 998, 824 N.Y.S.2d 466 (3d Dept. 2006) *lv. den.* 8 N.Y.3d 803, 838 N.Y.S.2d 699 (2007); Simpson v Alexander, 63 A.D.3d 1495, 882 N.Y.S.2d 342 (3d Dept. 2009). The Parole Board may consider evidence of offenses not established by conviction. Davis v U.S. Parole Commission, 674 F.Supp. 1031, 1033 (S.D.N.Y. 1987) *affirmed* 838 F.2d 1202 (2d Cir.1987). That the offense did not rise to the level required to sustain a criminal charge does not preclude the Board of Parole from revoking his parole, as revocation is based on his conduct which violated the conditions of parole. Rogers v Dennison, 47 A.D.3d 1149, 851 N.Y.S.2d 662 (3d Dept. 2008) *lv.den.* 10 N.Y.3d 711, 860 N.Y.S.2d 484.

Recommendation: Affirm.